IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2855 OF 1999

R.Z.Kazi ..Petitioner

Vs.

The Union of India & Ors. ..Respondents

Mr.U.D.Surve for Petitioner
Mr.Suresh Kumar with Mr. D.A.Dubey for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 3RD MARCH, 2005.

P.C.

. Petitioner is in the employment of Respondent No.1. He was earlier allotted government accommodation. It is the case of the Petitioner that as those premises were not suitable for residence he applied for alternative premises. The alternate premises were allotted to him.

2. The Respondents initiated proceedings under provisions of Public Premises Eviction Act, on the ground that the Petitioner had violated Sub Para 2 of S.R.-377-3-12. The enquiry was conducted. The Estate Officer directed eviction of the Petitioner from the premises by his order dated 5th February, 1996. It is the case of the Petitioner that on 19th January, 1996 he had already surrendered the first premises allotted to him.

3. Petitioner aggrieved preferred an appeal being Misc. Appeal No.124 of 1996. The Appellate Authority by his Order dated 28th April, 1999 dismissed the appeal. However, granted stay of eviction for a period of six weeks. When the Petition came up for admission ad-interim relief was granted in terms of prayer clause (c) on 5th August, 1999.

4. At the hearing of this Petition on behalf of the Petitioner the learned Counsel contends that though in terms of circular/G.R. it was open to the Respondents to cancel both the allotments yet before such cancellation in view of the Department Enquiry Memo No.12038 an opportunity had to be given to the allotee to explain his case before the cancellation is done. Petitioner in ground (a) has clearly averred that no such opportunity was given to him. No reply has been filed on behalf of Respondent. We therefore, proceed on the footing that the said contention goes unchallenged.

5. Considering the above and as no opportunity was given to the Petitioner, the impugned order is liable to be set aside, consequently Rule is made absolute in terms of prayer clause (a)(ii),(b) and (c). No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)